

No. 13-1874 BN

The Board filed a motion for summary decision on January 31, 2014. We notified Tiethoff that she could file a response to the motion by February 18, 2014, but she filed no response.

The Board relies on Tiethoff's failure to respond to its request for admissions. Such a failure shall result in each matter being admitted. Rule 59.01(a).

The matters admitted under Rule 59.01 bind the party to whom the requests were addressed and eliminate the need for further proof of the matters admitted. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo.App. W.D., 1985), *quoted in Dynamic Computer Solutions, Inc. v. Midwest Marketing Ins. Agency, L.L.C.*, 91 S.W.3d 708, 715 (Mo.App. W.D., 2002). Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law." *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986). Section 536.073<sup>1</sup> and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

The rule that matters admitted under Rule 59.01 bind the party to whom the requests were addressed applies also to *pro se* parties. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983); *see Welty v. State Bd. Of Chiropractic Examiners*, 759 S.W.2d 295, 299 (Mo. App. W.D. 1988) (applying the rule to a *pro se* party in a proceeding before this Commission). Therefore, we find that the following facts are uncontroverted.

### **Findings of Fact**

1. Tiethoff is currently licensed by the Board as a registered professional nurse ("RN"). Her license was current and active at all relevant times.
2. At all relevant times, Tiethoff worked for Med-Staff Home Health ("Med Staff") as an RN. Her job duties included visiting Med-Staff clients in their homes, as a field nurse.

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<sup>1</sup> RSMo 2000. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

3. On several occasions, Tiethoff failed to visit the patient assigned to her, but documented that she had done so. In particular, Tiethoff documented that she visited the following patients on the following dates:

- a. A.B., on October 24, 2012;
- b. A.G., on October 23, 2012;
- c. M.L., on October 24, 2012;
- d. P.L, on November 13, 2012; and
- e. C.T., on November 21, 2012.

Tiethoff made none of these patient visits.

4. Med-Staff terminated Tiethoff's employment on December 4, 2012, for falsification of records in connection with the conduct described above.

### **Conclusions of Law**

We have jurisdiction to decide this complaint under §§ 335.066.2 and 621.045.1. The Board has the burden of proving by a preponderance of the evidence that Tiethoff has committed acts for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Tiethoff admitted facts and that those facts authorize discipline. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline. *Kennedy v. Missouri Real Estate Comm’n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988). Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

\* \* \*

(12) Violation of any professional trust or confidence [.]

Subdivision (5) – Professional Standards

The Board alleges there is cause to discipline Tiethoff for misconduct, dishonesty, and misrepresentation. Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988). Dishonesty is a lack of integrity or a disposition to defraud or deceive. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004). A “misrepresentation” is a falsehood or untruth made with the intent of deceit rather than an inadvertent mistake. *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 3 (Mo. App. W.D. 1997).

Tiethoff admitted that on several occasions she failed to visit patients assigned to her, and documented that she did. Although we have no direct evidence of her mental state when she did so, we may infer the requisite mental state from the conduct of the licensee “in light of all

surrounding circumstances.” *Duncan*, 744 S.W.2d at 533. Absent any other compelling explanation, we conclude that Tiethoff’s false documentation of patient visits was dishonest, and each instance was a misrepresentation. Having found this intent on Tiethoff’s part, we also conclude she committed misconduct.

We find that Tiethoff is subject to discipline under § 335.066.2(5).

#### Subdivision (12) – Professional Trust or Confidence

The phrase “professional trust or confidence” is not defined in Chapter 335, nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]...  
engaged in one of the learned professions or in an occupation  
requiring a high level of training and proficiency...[;]  
and]...characterized or conforming to the technical or ethical  
standards of a profession or occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident  
dependence on the character, ability, strength, or truth of someone  
or something...[.]

*Id.* at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.* Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences. It may exist not only between the professional and her clients, but also

between the professional and her employer and colleagues. *See Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo App. E.D., 1989).

Tiethoff falsely documented that she had visited patients in their homes. It is obvious that that patients, colleagues and employers of RNs trust professional nurses to fulfill their nursing duties and to accurately document that they have done so. Failure to do so betrays that trust. There is cause to discipline Tiethoff under § 335.066.2(12).

### **Summary**

There is cause to discipline Tiethoff's license under § 335.066.2(5) and (12).

SO ORDERED on February 26, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner